

Service Date: June 16, 2003

DEPARTMENT OF PUBLIC SERVICE REGULATION
BEFORE THE PUBLIC SERVICE COMMISSION
OF THE STATE OF MONTANA

* * * * *

IN THE MATTER OF)	UTILITY DIVISION
PSC Investigation of Qwest Communications)	
Regarding the Justness and Reasonableness of)	DOCKET NO. D2003.2.22
Rates, Schedules and Terms and Conditions of)	
Service)	ORDER NO. 6493

ORDER DIRECTING QWEST COMMUNICATIONS TO COMPLY

Background

1. On March 14, 2003 the Montana Public Service Commission (Commission) opened this proceeding through a Notice of Investigation.
2. The March 14, 2003 Notice stated that information presented to the Commission by Qwest Communications ("Qwest") indicated that Qwest may be earning over its authorized rate of return and that its rates may be unjust and unreasonable. This required further investigation. Information regarding Qwest's earnings included the following (also set forth in the March 14, 2003 Notice of Investigation):
 - a. The authorized rate of return on average rate base for Qwest is 10.44 percent. (Docket No. D88.12.55, Order No. 5398a, February 26, 1990.)
 - b. In 1997, Qwest filed with the commission an annual report showing an adjusted rate of return on average rate base of 8.971 percent. (1997 annual report of US WEST Communications (now Qwest), schedule 35.)
 - c. In 1999, Qwest filed an annual report showing an adjusted rate of return on average rate base of 12.500 percent. (1999 annual report of US WEST Communications (now Qwest), schedule 35.)
 - d. In 2001, Qwest filed an annual report showing an adjusted rate of return on average rate base of 21.123 percent. (2001 annual report of Qwest Corporation, schedule 35.)

3. On April 24, 2003 the Commission entered a Second Notice of Investigation and Request for Information, requesting that Qwest provide responses to the following on or before May 22, 2003 (also set forth in Second Notice of Investigation, paragraph 2):

- a. Are the actual Montana earned rates set forth above accurate?
- b. If the reported actual earned rate of return for 2001 is not accurate, demonstrate why it is not, by providing information in the form that would meet the minimum filing requirements contained in ARM 38.5.2803 through 38.5.2820.

4. On May 22, 2003 Qwest submitted a document titled "Qwest's Response" to the Commission, in which Qwest stated that it could not represent to the Commission that the 2001 Annual Report is accurate, but neither provided nor offered to provide the information requested.

Findings of Fact

5. The authorized rate of return on average rate base for Qwest is 10.44 percent. (Docket No. D88.12.55, Order No. 5398a.)

6. Qwest filed its 2001 Annual Report on July 3, 2002, in which it showed an adjusted rate of return on average rate base of 21.123 percent. (2001 annual report of Qwest Corporation, schedule 35.)

7. Qwest's 2002 Annual Report was due on April 30, 2003. § 69-3-203(1), MCA. Qwest's 2002 Annual Report has not been filed with the Commission.

8. The March 14, 2003 Notice of Investigation was opened for the purpose of investigating whether the rates being charged by Qwest are just and reasonable. § 69-3-201, MCA; Notice of Investigation dated March 14, 2003, paragraph 3.

9. An intervention deadline of March 31, 2003 was set in the March 14, 2003 Notice of Investigation for persons with proper standing who desired to intervene and participate in the docket.

10. Qwest was not directed to respond to the March 14, 2003 Notice, and did not appear in response to the March 14, 2003 Notice. Intervenors that did appear in response to that Notice included: AT&T, Big Sky Telecom, Information Technology Services Division (Montana

Department of Administration), Montana Consumer Counsel, Montana Telecommunications Association, New Edge Networks and WorldCom, Inc.

11. The Commission issued a Second Notice of Investigation and Request for Information on April 24, 2003, in which the Commission requested responses to the following questions:

- a. Are the actual Montana earned rates set forth above accurate?
- b. If the reported actual earned rate of return for 2001 is not accurate, demonstrate why it is not, by providing information in the form that would meet the minimum filing requirements contained in ARM 38.5.2803 through 38.5.2820.

12. Qwest filed its response to the Second Notice of Investigation on May 22, 2003. (Qwest response, pages 1-2.)

13. In its response, Qwest states that “it cannot currently represent to the Commission that the information contained in the 2001 Annual Report is accurate.” (Qwest Response page 2.) No further information was provided as requested in the Second Notice of Investigation.

14. The response by Qwest to the Second Notice of Investigation issued on April 24, 2003, does not comply with the Commission’s direction.

Conclusions of Law

1. The Commission has authority to supervise, regulate and control public utilities. Section 69-3-102, MCA. Qwest is a public utility offering regulated telecommunications services in the State of Montana. Section 69-3-101, MCA.

2. Every public utility shall file with the Commission tariffs (schedules) that are in force at the time any service is to be performed by it within the State of Montana. Section 69-3-301, MCA.

3. A public utility may not charge, demand, collect or receive a greater compensation for a utility service performed by it than is specified in the printed schedules that are in force. Section 69-3-305(1)(a), MCA.

4. The Commission may at any time, on its own motion, investigate the rates, tolls, charges, rules, practices and services of a utility. § 69-3-324, MCA.

5. The Commission may at any time request information not provided in the annual reports whenever, in the judgment of the Commission, the information is necessary. § 69-3-203(2), MCA.

6. Qwest's 2001 annual report was due on April 30, 2002. § 69-3-203(1). The Commission received Qwest's 2001 annual report on July 3, 2002.

7. Qwest's 2002 annual report was due on April 30, 2003. Qwest has not filed its 2002 annual report with the Commission as of the date of this Order.

Order

THEREFORE, based upon the foregoing, it is ORDERED that:

1. Qwest submit information that conforms to the requirements contained in ARM 38.5.2803 through 38.5.2820 on or before September 6, 2003 for the year 2001, updated with information from the year 2002, in order for the Commission to compare such information with the information submitted in the 2001 and 2002 annual reports.

2. Qwest is directed to inform the Commission by June 30, 2003, in writing directed to Kate Whitney, Montana Public Service Commission, P.O. Box 202601, Helena, Montana 59620-2601, whether it will make a comprehensive filing fully compliant with the direction set forth in this Order.

3. Nothing in this Order represents a prejudgment on the merits of any issue that may arise as a result of the Qwest filing.

DONE AND DATED this 3rd day of June, 2003, by a vote of 5 to 0.

BY ORDER OF THE MONTANA PUBLIC SERVICE COMMISSION

BOB ROWE, Chairman

THOMAS J. SCHNEIDER, Vice Chairman

MATT BRAINARD, Commissioner

GREG JERGESON, Commissioner

JAY STOVALL, Commissioner

ATTEST:

Rhonda J. Simmons
Commission Secretary

(SEAL)

NOTE: Any interested party may request the Commission to reconsider this decision.
A motion to reconsider must be filed within ten (10) days. See ARM 38.2.4806.

CONCURRENCE OF COMMISSIONER ROWE

The best outcome would be for Qwest to file information for 2002, as promptly and completely as possible. If this is done, I am personally much less interested in the information for 2001, and would vote to waive its filing. If Qwest is willing to do this, it should promptly communicate that willingness to Commission staff, consistent with the instructions in the order.

Respectfully submitted,

Bob Rowe, Chairman